

NO PROTECT DEATH
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Surname

17 APR 1985

Dear Applicant:

We have considered your application for exemption under section 501(c)(9) of the Internal Revenue Code.

The information submitted indicates that you are a trust formed to provide death benefits for each member. Such death benefits are equal to times an employee's annual compensation with a minimum of \$ and a maximum of \$. The trust has purchased life insurance on the life of each member.

All full-time employees who are years old and have completed a year of service with the employer, are eligible to participate in the plan. Currently, you have eligible members. There is one excluded member because said member has not met the eligibility requirement stated in the plan document, i.e., completion of one year of service.

Your members, their corporate title, percentage of ownership and annual compensation are listed below:

<u>Employees</u>	<u>Directors</u>	<u>Corporate Title</u>	<u>Stock Ownership</u>	<u>Compensation</u>
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	X		%	
	X	Secretary		
	X	President	%	

The information submitted accounts for % of the ownership interest. We are unable to determine who owns the other %. According to the information submitted, only one person is entitled to the maximum \$ policy. The person so entitled is who owns % of the stock. A policy was not enclosed for , who is a director of the organization and who owns % of the stock.

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Surname [REDACTED]

[REDACTED]

The employer reserves the right to amend any provision under the trust at any time and to any extent that it may deem advisable without the consent of any member. The employer reserves the right at any time and in its sole discretion to terminate the trust or its participation in the trust.

The trustees of the plan are [REDACTED] and [REDACTED].
Though your information did not indicate, it is assumed that [REDACTED]
[REDACTED] are spouses.

Section 501(c)(9) of the Code provides for the exemption from federal income tax of voluntary employees' beneficiary associations (VEBA) providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-4(a) of the Income Tax Regulations provides that no part of the net earnings of an employees' association may inure to the benefit of any private shareholder or individual other than through the payment of permissible benefits. Whether prohibited inurement has occurred is a question to be determined with regard to all the facts and circumstances.

Based on the information available, we conclude that you are not a voluntary employees' beneficiary association as the term is used in section 501(c)(9) of the Code.

A Section 501(c)(9) VEBA functions primarily as a cooperative device for pooling funds and distributing risks over and benefits to a defined group of employees sharing an employment-related common bond. Prohibited inurement arises when a VEBA benefits one or more individuals other than through the performance of functions characteristic of an organization described in section 501(c)(9). Thus, the inurement prescription would bar tax-exempt treatment of an organization predominantly organized and operated to promote the interest of an individual standing in relationship to the organization as an investor for private gain.

In your case, [REDACTED] and [REDACTED] are entitled to [REDACTED]% of the benefits under the plan. In addition, by reason of their ownership and control over the employer corporation, the above named individuals have ultimate control over the continued existence of the trust.

Under the circumstances, we believe that [REDACTED] and [REDACTED] maintain a posture that is incompatible with the inurement proscription of section 1.501(c)(9)-4(a) of the regulations. A limited membership in combination with

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[REDACTED]

allocation of a dominant share of the aggregate benefits to the owner/member indicates that the VEBA is organized and operated for the benefit of its owner/member and not for any employee group. The trust would be subject to termination at the discretion of the owner/member. By controlling the timing of trust termination, the owner/member would be able to direct the distribution of (his/her) allocable share of the trust assets. Under these circumstances, the VEBA would function substantially as an investment fund for the direct personal and private benefit of its owner/member. An organization functioning in this manner is inconsistent with the exempt purpose of a VEBA of providing benefits to promote the common welfare of an association of employees, as opposed to the welfare of a single employee.

Accordingly, based on all the facts and circumstances, we conclude that your trust and plan do not qualify for recognition of exemption from federal income tax under section 501(c)(9) of the Code. You are, therefore required to file federal income tax returns.

You have the right to protest this ruling if you think it is incorrect. To protest, you should submit a statement of your views with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted in duplicate within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, he must file a proper power of attorney and otherwise qualify under the Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the District Director, San Francisco, California, which is your key district for exempt organization matters. Thereafter, any questions involving federal income tax status or the filing of tax returns should be addressed to that office.

Further correspondence with respect to this case should be sent to the following address:

[REDACTED]
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Sincerely yours,

(Signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch

[REDACTED] cc: [REDACTED]
[REDACTED]
[REDACTED] 4/9/85 4/14/85